



Braun Intertec Corporation
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July 5, 2017

Proposal QTB060800

Daniel Schluender, PE
City of Blaine
10801 Town Square Drive NE
Blaine, MN 55449

Re: Proposal for Construction Materials Testing Services
105th Avenue from Trunk Highway (TH) 65 to County State Aid Highway (CSAH) 52
S.A.P. – 106-147-001
Blaine, Minnesota

Dear Mr. Schluender:

Braun Intertec Corporation is pleased to submit this proposal to provide construction materials testing services for the 105th Avenue Reconstruction Project in Blaine, Minnesota.

Since our inception in 1957, we have grown into one of the largest employee-owned engineering firms in the nation. With around 1,000 employee owners, retaining our firm gives you access to a diverse range of services and professionals you can consult with if the unforeseen occurs. The size of our company also allows us to respond quickly when schedule constraints occur.

Our office is located within fifteen miles of the site, minimizing travel times and trip expenses. This proximity also provides the opportunity to quickly mobilize to the site when unforeseen needs arise.

We have a history of completing projects with your agency including working on West Central Avenue Service Road, 93rd Lane Industrial Park Area, 2016 Street Improvements and 91st Avenue Improvements for Construction Materials Testing services. We believe that our past reputation and record of performance should be considered when evaluating this proposal.

Our Understanding of Project

We understand this project will include the reconstruction of 105th Avenue from TH-65 to CSAH-52. This project will include pavement subgrade preparation, embankment construction, placement of select granular borrow, aggregate base, new concrete curb and gutter, sidewalk, and driveways along with new bituminous pavement. Improvements to the sanitary sewer, storm sewer and watermain utilities will also be part of this project. Braun Intertec performed the geotechnical evaluation for the project. Our familiarity with the soil conditions on the project will be a good asset for the City of Blaine.

This project is a City of Blaine project with state-aid funding. Projects that are constructed with state-aid funding are required to perform Quality Control and Quality Assurance (QC/QA) testing in accordance with the Minnesota Department of Transportation's (MnDOT's) 2016 Standard Specifications for construction. This project is using MnDOT's 2017 State Aid for Local Transportation (SALT) Schedule of Materials Control. Personnel with MnDOT certifications must complete the monitoring and testing. Braun Intertec will perform the quality assurance field testing and plant monitoring on the project as

AA/EOE

listed in our scope of services and as shown on our attached cost estimate table. The contractor will be responsible for performing all of the required quality control testing and submitting all the documentation. An audit of the project could be conducted upon completion. The audit may include reviewing tests and paperwork provided by your QC/QA representative.

Available Project Information

This proposal was prepared using the following documents and information.

- Project specifications and plans prepared by WSB & Associates, Inc., dated April 3, 2017.
- A draft geotechnical report prepared by Braun Intertec (B15-00893), dated June 2, 2015.
- Discussions with you, Al Thorp and Jason Sundeen on testing requirements.

Braun Intertec Project Personnel

For this project, we will provide technicians that are MnDOT certified in each specialized field. We have many MnDOT certified employees. For the proposed scope of services, our staff will have the following certifications:

- Aggregate Production
- Grading & Base I
- Concrete Field I
- Concrete Plant I
- Bituminous Plant I
- MnDOT or ACI Strength Testing

Accredited Laboratory

In the 2017 "SALT" Schedule of Material Control, which is part of this project's testing requirements, MnDOT requires laboratories performing acceptance tests for payment to be accredited by the AASHTO Resource (formerly AASHTO Materials Reference Laboratory [AMRL]) for all test procedures performed.

Braun Intertec is one of the few independent testing companies that is accredited in the metro area. With Braun Intertec's Metro Material Laboratory typically operating 24 hours a day, laboratory test results are delivered in a timely manner to reduce delays resulting from test results.

Scope of Services

Testing services will be performed on an on-call, as-needed basis as requested and scheduled by you or your on-site project personnel. Based on our understanding of the project, we propose the following services.

Soil Related Services

- Perform informational nuclear gauge density tests on sub-grade, embankment, utility and select granular borrow backfill materials.
- Perform Dynamic Cone Penetrometer (DCP) tests on aggregate base material.
- Perform companion moisture content tests at time of compaction with contractor's quality control personnel on backfill and aggregate base materials.
- Perform gradation tests on select granular borrow, granular bedding and aggregate base materials.
- Perform laboratory standard Proctor tests on backfill and fill materials.
- Prepare the preliminary and final grading and base report along with assembling the random sampling locations report for the aggregate base materials according to MnDOT Specifications.

Concrete Field Testing Related Services

- Sample and test the plastic concrete for slump, air content, temperature prior to placement.
- Prepare 4-inch by 8-inch cylinders for compressive strength testing.
- Laboratory compressive strength testing of cylinders for general concrete.
- Supply beam molds, curing and testing of flexural strength beams for concrete pavement.
- Perform concrete ready-mix batch plant inspections which include periodic observations of plant operations, collecting and submitting aggregate samples, cement samples and admixture samples for testing.
- Perform coarse and fine aggregate gradation tests.
- Develop the Weekly Concrete Reports for the Project Engineer's review and their submittal to MnDOT's Concrete Office.

Bituminous Related Services

- Perform bituminous plant inspections which includes periodically observing the contractor's quality control testing, observing one set of contractor tests per day and collecting companion samples for quality assurance tests.
- Collect one verification sample per mix per day of production. Perform quality assurance tests on these samples which include Rice specific gravity, asphalt content, extracted aggregate gradation, gyratory density, coarse aggregate angularity, and fine aggregate angularity.
- Randomly determine and mark pavement core locations.

- Observe the contractor coring and core testing in accordance with MnDOT's specifications, which include watching quality control personnel weigh the cores at their laboratory.
- Collect companion cores and test for thickness and density of pavement cores.

Reporting and Project Management

Test results will be issued weekly for the project as the various tasks are performed. If, at any time, there are failing tests which do not appear to be in accordance with the plans and specifications or MnDOT's Schedule of Materials Control, we will notify the engineer's representative and any others that we are directed to notify.

Before the final project closeout, we will issue a final report. The report will include the following:

- Braun Intertec technician roster for technicians that conducted testing on the project.
- Completed MnDOT Materials Certification Exceptions Summary for items tested by Braun Intertec.
- Completed Preliminary and Final Grading and Base Report.
- Moisture, Density, DCP, Proctor and Gradation tests.
- Concrete mix designs.
- Weekly concrete reports.
- Concrete compressive strength results.
- Concrete batch plant inspection field forms.
- Completed test reports for samples sent to the MnDOT Materials Lab.
- Bituminous mix designs.
- Bituminous verification test results.
- Bituminous contractor's summary sheets.
- Random core log location worksheets.
- Completed density incentive/disincentive worksheets.
- Copies of concrete and bituminous plant certifications.

Basis of Scope of Work

The costs associated with the proposed scope of services were estimated using the following assumptions. If the construction schedule is modified or the contractor completes the various phases of the project at different frequencies or durations than shown in this proposal, we may need to adjust the overall cost accordingly. The scope of work and number of trips required to perform these services are as shown in the attached table. Notable assumptions in developing our estimate include:

- We understand informational compaction testing will be performed using the nuclear density method on sub-grade, embankment, utility and select granular borrow backfill materials; a minimum of two tests will be conducted each trip with six trips assumed.
- We understand compaction testing on aggregate base material will be performed using the Dynamic Cone Penetration (DCP) method; a minimum of three tests will be conducted each trip with ten trips assumed.
- We assume forty-six sets of concrete tests will be required to complete the project.
- We understand the rebar observations before concrete placements will be completed by the project representative's construction oversight manager.
- We assume bituminous paving will be completed in eight days for this project assuming the contractor paves 2,000 tons a day.
- We understand that City of Blaine staff will perform test-roll observations of the pavement subgrade soils to determine if the materials tested are capable of supporting bituminous pavement.
- We understand the project engineer of record will review and approve the contractor's quality control submittals and test results.
- You, or others you may designate, will provide us with current and approved plans and specifications for the project. Modification to these plans must also be sent to us so we can review their incorporation into the work.
- We will require a minimum of 24 hours' notice for scheduling inspections for a specific time. Shorter than 24 hours' notice may impact our ability to perform the requested services, and the associated impacts will be the responsibility of others.

If the work is completed at different rates than described above, this proposal should be revised.

Cost and Invoicing

We will furnish the services described herein for an estimated fee of \$61,812. **Our estimated costs are based on industry averages for construction production. Depending on the contractor's performance,**

our costs may be significantly reduced or slightly higher than estimated. A tabulation showing our estimated hourly and/or unit rates associated with our proposed scope of services is also attached.

Additional Services and Overtime

It is difficult to estimate all of the services, and the quantity of each service, that will be required for any project. Our services are also directly controlled by the schedule and performance of others. For these reasons, our actual hourly or unit quantities and associated fees may vary from those reported herein.

If the number of hours or units ultimately required exceed those assumed for purposes of this proposal, they will be invoiced at the hourly or unit rates shown in the attached tabulation. If services are ultimately required that have not been identified or described herein, they will be invoiced in accordance with our current Schedule of Charges. Prior to exceeding our estimated fees, we will update you regarding the progress of our work.

This cost estimate was developed with the understanding that the scope of services defined herein will be required and requested during our normal work hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. Services that we are asked to provide to meet the project requirements or the contractor's construction schedule **outside** our normal work hours will be invoiced using an overtime rate factor. The factor for services provided outside our normal work hours or on Saturday will be 1.25 times the normal hourly rate for the service provided. The factor for services provided on Sunday or legal holidays will be 1.5 times the normal hourly rate for the service provided. We have not included premiums for overtime; however, we recommend that allowances and contingencies be made for overtime charges. You will be billed only for services provided on a time and material basis.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. After reviewing this proposal, **please sign and return one copy to our office as notification of acceptance and authorization to proceed.** If anything in this proposal is not consistent with your requirements, please let us know immediately. Braun Intertec will not release any written reports until we have received a signed agreement. Also, ordering services from Braun Intertec constitutes acceptance of the terms of this proposal including the attached General Conditions.

The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

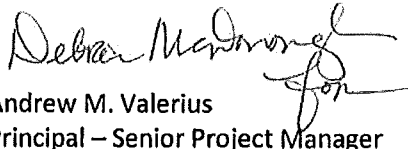
To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Chad Seaton at 612.221.0450 (cseaton@braunintertec.com).

Sincerely,

BRAUN INTERTEC CORPORATION



Chad M. Seaton
Associate Principal – Senior Project Manager



Andrew M. Valerius
Principal – Senior Project Manager

Attachment:
Cost Estimate Table
General Conditions – CMT (7/18/16)

The proposal is accepted. We will reimburse you in accordance with this agreement, and you are authorized to proceed:

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

Client: City of Blaine Daniel Schluender 10801 Town Square Dr NE Blaine, MN 55449 763-784-6700	Work Site Address: 105th Ave from TH-65 to CSAH-52 Blaine, MN 55449	Service Description: QA Construction Materials Testing
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	Description	Quantity	Units	Unit Price	Extension
Phase 1	MnDOT Testing				
Activity 1.1	Soil Testing				\$7,240.00
207	Compaction Testing - Nuclear	15.00	Hour	76.00	\$1,140.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Informational Compaction Tests	6.00	Trips	2.50	15.00
217	Compaction Testing - Sandcone & DCP's	30.00	Hour	76.00	\$2,280.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Aggregate Base	10.00	Trips	3.00	30.00
1530	Asphalt Content (ASTM D 2172/6307), per sample	2.00	Each	150.00	\$300.00
209	Sample pick-up	10.00	Hour	76.00	\$760.00
1318	Standard Proctor Test(ASTM D 698)	4.00	Each	180.00	\$720.00
1162	Sieve analysis & 200 wash (ASTM C 136 & C 117) per sample	10.00	Each	129.00	\$1,290.00
1308	Nuclear moisture-density meter charge, per hour	15.00	Each	22.00	\$330.00
1861	CMT Trip Charge	21.00	Each	20.00	\$420.00
Activity 1.2	Concrete Testing				\$29,300.00
261	Concrete Testing	115.00	Hour	76.00	\$8,740.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Sidewalks	22.00	Trips	2.50	55.00
	Curb & Gutter	16.00	Trips	2.50	40.00
	Driveway Aprons	4.00	Trips	2.50	10.00
	Concrete Paving	4.00	Trips	2.50	10.00
1364	Compressive strength of concrete cylinders (ASTM C 39), per specimen	126.00	Each	29.00	\$3,654.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Sidewalks	22.00	Sets	3.00	66.00
	Curb & Gutter	16.00	Sets	3.00	48.00
	Driveway Aprons	4.00	Sets	3.00	12.00
1162	Sieve analysis & 200 wash (ASTM C 136 & C 117) per sample	46.00	Each	129.00	\$5,934.00
215	Concrete Ready Mix Plant Monitoring	69.00	Hour	100.00	\$6,900.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Concrete Plant Inspections	23.00	Trips	3.00	69.00
278	Concrete Cylinder Pick up	23.00	Hour	76.00	\$1,748.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Cylinder Pickup	23.00	Trips	1.00	23.00
1861	CMT Trip Charge	92.00	Each	20.00	\$1,840.00
1367	Flexural strength of beams (ASTM C 78 and ASTM C 293), per specimen	4.00	Each	121.00	\$484.00
Activity 1.3	Pavement Testing				\$14,904.00
1530	Asphalt Content (ASTM D 2172/6307), per sample	8.00	Each	150.00	\$1,200.00
1532	Extracted aggregate gradation (ASTM D 5444), per sample	8.00	Each	100.00	\$800.00

Project Proposal

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105th Ave - (SAP-106-147-001)

221	Bituminous Coring	24.00	Hour	100.00	\$2,400.00
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	<i>Mark & Observe Contractor Coring & Testing</i>	8.00	Trips	3.00	24.00
1542	Thickness and density of pavement core (ASTM D 2726)	56.00	Each	51.00	\$2,856.00
222	Bituminous Verification Testing	40.00	Hour	100.00	\$4,000.00
	<i>Work Activity Detail</i>	<i>Qty Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>	
	<i>Bituminous Plant Monitoring</i>	8.00	Trips	5.00	40.00
1528	Rice specific gravity (ASTM D 2041), per sample	8.00	Each	80.00	\$640.00
1705	Fine Aggregate Angularity (ASTM C1252), per sample	8.00	Each	76.00	\$608.00
1568	Gyratory gravity (AASHTO T312), per sample	8.00	Each	180.00	\$1,440.00
1688	Percent crushed (ASTM D5821), per sample	8.00	Each	80.00	\$640.00
1861	CMT Trip Charge	16.00	Each	20.00	\$320.00
Activity 1.4	Project Management				\$10,368.00
226	Project Manager	40.00	Hour	162.00	\$6,480.00
1230	MnDOT Final Report	1.00	Each	1,500.00	\$1,500.00
228	Senior Project Manager	6.00	Hour	182.00	\$1,092.00
238	Project Assistant	16.00	Hour	81.00	\$1,296.00
Phase 1 Total:					\$61,812.00

Proposal Total:	\$61,812.00
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General Conditions

Construction Material Testing and Special Inspections

Section 1: Agreement

1.1 Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for costs and expenses incurred up to the time of termination.

Section 2: Our Responsibilities

2.1 We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and

further that site conditions may vary over distance or change over time.

2.4 Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

3.2 You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

3.3 If we notify you that radiographic or gamma ray equipment or other nuclear testing or measuring device will be used, you will be responsible for the cooperation of your employees and your contractors in observing all radiation safety standards.

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for costs and expenses incurred up to the time of termination.

3.5 The time our field personnel spend on the job site depends upon the scheduling of the work we are observing or testing. You agree that any changes in scheduling may result in additional

costs and agree to pay for those services at the rates listed in our cost estimate.

3.6 You agree to include us as an indemnified party in your contracts, if any, for work by others on the project, protecting us to the same degree as you are protected. You agree to list us as an Additional Insured under your liability insurance policies and to require subrogation be waived against us and that we will be added as an Additional Insured on all policies of insurance, including any policies required of your contractors or subcontractors, covering any construction or development activities to be performed on the project site.

Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report(s) in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

4.3 If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.4 Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Compensation

5.1 You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated cost is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is

creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

5.4 Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

5.5 If you do not pay us in accordance with this Agreement, you agree to reimburse our costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees, staff time, and other costs and expenses.

5.6 You agree to compensate us in accordance with our Schedule of Charges if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.7 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

5.8 If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for costs and expenses incurred up to the time of termination.

5.9 In consideration of our providing insurance to cover claims made by you, you hereby waive any right to offset fees otherwise due us.

Section 6: Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue,

loss of product or output, or business interruption.

6.3 You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

6.4 For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

6.5 You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.

6.6 This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

6.7 No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

Section 7: General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 This Agreement may be terminated early only in writing. You will compensate us for costs and expenses incurred up to the time of termination.

8.5 If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

8.6 No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.